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PTQ4004

RELEASED IN PART

B1, 1.4(D)

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ACTION INR-00

INFO LOG-00 NP-00 ACQ-00 CIAE-00 DODE-00 WHA-00 PERC-00
DS-00 VC-00 TEDE-00 LAB-01 VCE-00 AC-01 NSAE-00
ACE-00 DSCC-00 DRL-02 NFAT-00 SAS-00 /004W
-----DE2EB0 261837Z /38

R 261806Z AUG 02
FM AMEMBASSY CARACAS
TO SECSTATE WASHDC 7383
INFO NSC WASHDC
USCINCSO MIAMI FL
AMEMBASSY BOGOTA

C O N F I D E N T I A L SECTION 01 OF 03 CARACAS 002558

NSC FOR LORENZ, AMB. MAISTO
INR FOR FERNANDEZ
USCINCSO ALSO FOR POLAD

E.O. 12958: DECL: 08/25/12
TAGS: PREL, PGOV, VE
SUBJECT: NO MILITARY REBELLION: ANALYZING HOW THE SUPREME
COURT RULED

CLASSIFIED BY AMBASSADOR CHARLES S. SHAPIRO FOR REASONS 1.5
(B) AND (D).

SUMMARY

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1. (C)

THE OPINION WRITTEN BY JUSTICE FRANKLIN ARRIECHE
EMPHASIZED THE PUBLIC STATEMENT ON APRIL 12 BY THEN-
INSPECTOR GENERAL OF THE ARMED FORCES LUCAS RINCON THAT
CHAVEZ HAD RESIGNED, THAT THIS RESIGNATION WAS ACCEPTED BY
THE ARMED FORCES, AND THAT THE EXECUTIVE AUTHORITY HAD BEEN
VACATED.

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UNITED STATES DEPARTMENT OF STATE
CLASSIFIED BY DEPT. OF STATE, L. R. LOHMAN, DAS, A/ISS
REVIEW AUTHORITY: ALAN H FLANIGAN
CLASSIFICATION: CONFIDENTIAL REASON: 1.4(D)
DECLASSIFY AFTER: 6 JUN 2027
DATE/CASE ID: 08 MAR 2007 200503244

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ARRIECHE'S OPINION

6. (C) THE OPINION BY SUPREME COURT VICE PRESIDENT FRANKLIN
ARRIECHE BEGINS BY REVIEWING ATTORNEY GENERAL RODRIQUEZ'S
CHARGE OF THE FOUR OFFICERS FOR REBELLION UNDER ARTICLE 476
OF THE ORGANIC CODE OF MILITARY JUSTICE, WHICH DEFINES
MILITARY REBELLION AS "PROMOTING, HELPING, OR SUSTAINING

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INFO	LOG-00	NP-00	ACQ-00	CIAE-00	DODE-00	WHA-00	PERC-00
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TO SECSTATE WASHDC 7384
INFO NSC WASHDC
USCINCSO MIAMI FL
AMEMBASSY BOGOTA

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ANY ARMED MOVEMENT TO DISTURB THE INTERNAL PEACE OF THE REPUBLIC OR IMPEDING OR UNDERMINING THE GOVERNMENT'S EXERCISE OF ANY OF ITS POWERS." RODRIGUEZ'S CASE WAS THUS LIMITED TO DEMONSTRATING THAT THE FOUR HAD EITHER PROMOTED OR AIDED AN ARMED MOVEMENT.

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7. (C) ARRIECHE'S OPINION STATES THAT, SO BOTH THE COUNTRY AND THE INTERNATIONAL COMMUNITY UNDERSTAND THE REASONING OF THE HIGH COURT, IT WAS OF "THE HIGHEST IMPORTANCE" TO EXAMINE THE FACTS BEHIND THE ATTORNEY GENERAL'S ACCUSATION.

--TO BEGIN, IT NOTES A PRONOUNCEMENT BY GENERAL DAMIANI BUSTILLOS ON APRIL 10, THE DAY BEFORE CHAVEZ WAS DEPOSED, SAYING THE ARMED FORCES SHOULD NOT INTERVENE IN A CONFLICT THAT WAS "EMINENTLY CIVIL" IN NATURE.

--NEXT, IT CITES THE TESTIMONY OF NATIONAL GUARD GEN. CARLOS ALFONZO MARTINEZ, WHO DEEMED THE MARCH ON APRIL 11 AS PEACEFUL AND "NOT DISTURBING THE PUBLIC ORDER," AND EXPLAINED THE ROLE OF THE GUARD WAS TO SEPARATE BOTH THE OPPOSITION AND THE CHAVEZ FOLLOWERS AFTER VIOLENCE BROKE OUT.

--AFTER THE VIOLENCE RESULTED IN NUMEROUS CASUALTIES, TWO OF THE FOUR ACCUSED (VADM HECTOR RAMIREZ PEREZ AND BG PEDRO PEREIRA) ALONG WITH SEVERAL OTHER TOP OFFICERS DISAVOWED THE GOVERNMENT UNDER ARTICLE 57 AND 350 OF THE CONSTITUTION.

--NEXT, GEN. EFRAIN VASQUEZ VELAZCO, COMMANDING GENERAL OF THE ARMY AND ANOTHER OF THE ACCUSED, ON THE NIGHT OF APRIL 11 ISSUED A PRONOUNCEMENT AGAINST "ARMED BOLIVARIAN GROUPS" AND ASKED FOR THE PUBLIC'S FORGIVENESS FOR THE ARMED FORCES' FAILURE TO PREVENT THEIR MURDEROUS ATTACKS. VASQUEZ ADDITIONALLY ORDERED ALL COMMANDING OFFICERS TO KEEP THEIR TROOPS AT THEIR RESPECTIVE BASES. HE EMPHASIZED THAT THE

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ARMED FORCES REFUSED TO RECOGNIZE PRESIDENT CHAVEZ'S ORDER TO ENACT PLAN AVILA, A PLAN DESIGNED FOR THE MILITARY TO PUT DOWN AN ARMED INSURRECTION BY FORCE.

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THE KEY: LUCAS RINCON'S DECLARATION

8. (C) ON THE MORNING OF APRIL 12, INSPECTOR GENERAL OF THE ARMED FORCES LUCAS RINCON READ THE FOLLOWING DECLARATION: "THE MEMBERS OF THE HIGH COMMAND OF THE NATIONAL ARMED FORCE OF THE BOLIVARIAN REPUBLIC OF VENEZUELA DEPLORE THE LAMENTABLE EVENTS THAT HAPPENED IN THE CAPITAL YESTERDAY. BECAUSE OF SUCH EVENTS, THE RESIGNATION OF (PRESIDENT CHAVEZ'S) OFFICE WAS SOLICITED, WHICH HE ACCEPTED. THE MEMBERS OF THE MILITARY HIGH COMMAND AT THIS MOMENT ARE PREPARED TO SUBMIT THEIR RESIGNATIONS WHICH WILL BE DELIVERED TO THE OFFICIALS THAT ARE DESIGNATED BY THE NEW AUTHORITIES."

9. (C) ARRIECHE'S OPINION CONCLUDES THAT "SUCH A DECLARATION, GIVEN BY THE MILITARY HIGH COMMAND, HAS TO BE INTERPRETED IN THE SENSE THAT THE MILITARY HIGH COMMAND ALSO DID NOT AGREE WITH THE IMPLEMENTATION OF THE ACTIVITIES DENOUNCED BY THE ACCUSED (THE VIOLENCE AND THE ORDERING OF PLAN AVILA) AND MOREOVER PLACED THE RESPONSIBILITY ON THE PRESIDENT OF THE REPUBLIC FOR THESE CIRCUMSTANCES, TO THE POINT OF ASKING FOR HIS RESIGNATION." THE OPINION GOES ON TO STATE THAT THE GENERAL IN CHIEF CALLED UPON THE PUBLIC TO REMAIN CALM--"THIS COULD NOT BE MAINTAINED IF IT DID NOT ALREADY EXIST"--AND THAT THEREFORE

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THE ACCUSED HAD NOT DISTURBED THE INTERNAL PEACE, ONE OF THE DEFINING CHARACTERISTICS OF "MILITARY REBELLION."

10. (C) THE ARRIECHE OPINION FURTHER ADDS THAT THE ONLY ONE OF THE ACCUSED IN EFFECTIVE COMMAND OF TROOPS (GEN. VASQUEZ) HAD ORDERED ALL HIS SUBORDINATES TO KEEP THEIR TROOPS IN THEIR BARRACKS, MEANING THIS WAS NOT A "GOLPE DE ESTADO" NOR AN INSURRECTION BUT INSTEAD DISOBEDIENCE TO THE PRESIDENT'S ORDER TO IMPLEMENT PLAN AVILA, WHICH, IN THE VIEW OF THE GENERAL "WOULD HAVE MEANT A MASSACRE." THE ONLY CONCLUSION, ACCORDING TO THE MAGISTRATES, WAS THAT, FAR FROM DISTURBING THE PEACE OR IMPEDING THE FUNCTION OF GOVERNMENT, THE ACCUSED WERE TRYING TO RESTORE THE PEACE.

MORE EVIDENCE IN DEFENSE OF THE ACCUSED

11. (C) AS THE ARRIECHE OPINION POINTS OUT, PRESIDENT

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CHAVEZ SAID IN HIS OWN TESTIMONY TO THE ATTORNEY GENERAL'S OFFICERS ON MAY 4 THE SOLICITATION FOR HIS RESIGNATION CAME

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FROM GEN. RINCON AND THE HIGH COMMAND. HOWEVER, CHAVEZ DID NOT IDENTIFY ANY OF THE ACCUSED AS THOSE SOLICITING HIS RESIGNATION. IN SHORT, CHAVEZ'S OWN TESTIMONY COULD NOT LINK THE ACCUSED TO HIS SUPPOSED RESIGNATION.

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12. (C) FURTHERMORE, ARRIECHE NOTES THAT DEFENSE MINISTER JOSE VICENTE RANGEL IN AN INTERVIEW IN EL NACIONAL PUBLISHED ON APRIL 13 SAID, IN RESPONSE TO THE QUESTION "WAS THERE OR WASN'T THERE A "COUP D'ETAT?" RESPONDED: "OBVIOUSLY THERE WAS A PRONOUNCEMENT BY THE ARMED FORCE THAT DEPOSED THE PRESIDENT." WHEN ASKED HOW HE COULD QUALIFY IT THAT WAY, RANGEL STATED THAT "THAT IS A PROBLEM OF SEMANTICS." THE TESTIMONY OF GEN. (RET.) ELIECER HURTADO SOURCE, THE MINISTER OF INFRASTRUCTURE WHO WITNESSED THE EVENTS IN MIRAFLORES, DID NOT IMPUGN THE FOUR ACCUSED AND

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IN FACT STATED THEIR INTENTION WAS TO PREVENT DISTURBING
THE PEACE.

THE RESIGNATION WAS ACCEPTED

13. (C) ARRIECHE'S OPINION MOREOVER NOTES THAT CHAVEZ'S
DETENTION LATER ON THE MORNING OF APRIL 12 WAS NOT ILLEGAL
BECAUSE ALL HAD ACCEPTED THE COMMUNIQUE READ BY GEN. LUCAS
RINCON AT 0230 ON APRIL 12. THE OPINION STATES THAT "FROM
THAT MOMENT ON, ALL THE CITIZENS OF THE COUNTRY HAD THE
RIGHT AND EVEN THE OBLIGATION TO CONSIDER AS CERTAIN THAT
AFFIRMATION, TO THE POINT OF INCLUDING THOSE BEYOND THE
BORDERS OF THE COUNTRY." IT GOES ON TO QUOTE THE
DECLARATION OF THE SECRETARY OF THE OAS, WHICH STATED THAT
THE RIO GROUP HAD ACCEPTED CHAVEZ'S RESIGNATION AS A FACT.

14. (C) IT CONCLUDES: "AS SOON AS THE GENERAL-IN-CHIEF
ANNOUNCED THE RESIGNATION OF THE PRESIDENT AND OF THE
MILITARY HIGH COMMAND, THE WHOLE COUNTRY HAD THE RIGHT AND
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THE OBLIGATION TO BELIEVE THIS HAD HAPPENED JUST AS THE OAS
HAD, THAT IN VENEZUELA THERE WAS A CRISIS IN THE EXECUTIVE
POWER FOR LACK OF THE OFFICEHOLDER OF THE PRESIDENCY" SINCE
CHAVEZ HAD RESIGNED AND VP DIOSDADO CABELLO HAD FLED.

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